

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
v.	§	Cause No.: EP-11-CR-2728-KC
	§	
ANGEL OCASIO,	§	
	§	
Defendant.	§	

GOVERNMENT'S PROPOSED VOIR DIRE

COMES NOW the United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorneys, and moves the Court to allow the following voir dire questions and further requests leave to submit any supplemental questions as may appear necessary and proper.

CASE SPECIFIC QUESTIONS

The defendant in this case is charged with federal offenses which make it unlawful to distribute, receive and/or possess images depicting minors engaged in sexually explicit conduct. I refer to these laws using these specific terms because these terms have very particular meaning. For example "minor," means less than 18 years of age. "Sexually explicit conduct" has a very specific meaning. But for the purpose of this voir dire examination, I am going to refer to the offenses charged with the more familiar, short-hand characterization: "child pornography." In this case, the government alleges that the defendant, Angel Ocasio, used his home computer to receive, send and store computer images and that the crime was accomplished by using a peer-to-peer file sharing program over the internet. The government

does not allege that the defendant was involved in the making of these pictures. Nor does the government allege the defendant was directly involved in any inappropriate contact with children. This case is about the trading and collecting of videos and images which, in this instance, happen to be in the format of computer files. Of course, the Indictment is not evidence, and it is the government's burden to prove its case beyond a reasonable doubt.

1. Do you know anything at all about the facts of this case?
 - a. Was it from a media source? If so, which one and where did you hear or read it?
 - b. Was it from some source other than the media? If so, what was the source of information and when did you encounter it?
 - c. Have you ever discussed this case with anyone who claimed to know the facts?
 - d. Will you be able to decide this case solely upon the basis of evidence presented in Court, as opposed to anything you may have seen or heard about the case previously?

_____ GRANTED

_____ DENIED

2. Have you heard anything about this case since you arrived at the courthouse?

_____ GRANTED

_____ DENIED

GENERAL QUESTIONS

3. Does any member of the jury panel have any opinions, religious beliefs, philosophies, or prejudices which would make you unable to come to a verdict in this case? For example, do you believe that no person should ever be judged by another person?

_____ GRANTED

_____ DENIED

Follow up question could include:

Do you believe that a person is guilty just because they are here in court?

4. Has any member of the jury personally, or any jury member's spouse, close friend, or relative ever been arrested, charged, or convicted of any criminal offense except minor traffic offenses?

_____ GRANTED

_____ DENIED

Follow up questions could include:

a. If so, were you or the person involved treated fairly by law enforcement and prosecutor?

b. Would the prior experience with law enforcement or prosecutor affect your ability to be fair and impartial in this case?

5. Has any member of the jury personally, or any jury member's, spouse, close friend, or relative ever been the subject of any government investigation?

_____ GRANTED

_____ DENIED

Follow up questions can include the following:

a. If so, were you satisfied or dissatisfied with the outcome?

b. Do you feel you were treated fairly or unfairly?

6. Is there anyone here who knows someone who has been arrested or charged with a criminal offense and as a result would be reluctant or uncomfortable sitting as a juror in this case?

_____ GRANTED

_____ DENIED

Follow up questions can include the following

a. Without giving any details, how familiar were you with the facts of the case?

b. Do you think this person was treated fairly?

7. Has anyone here ever had a bad or unpleasant experience with either a federal or state law enforcement officer, or any other dealings with government employees who, because of those experiences, feels they could not be fair to or would be prejudiced against those government witnesses who work in law enforcement or for the government?

_____ GRANTED

_____ DENIED

8. This case was investigated by special agents with Department of Homeland Security, Homeland Security Investigations, CyberCrimes Group. Have any of you had any experience with this agency, either good or bad, that might prevent you from being a fair and impartial juror?

_____ GRANTED _____ DENIED

9. Would any member of the jury hesitate to follow the instructions of law that the Court will give, regardless of whether or not he or she agrees with those instructions?

_____ GRANTED

_____ DENIED

10. Will any member of the jury panel find it difficult to render a decision as to guilt or innocence without regard to any sympathy, pity, or other feelings he or she may have, either for or against the defendant?

_____ GRANTED

_____ DENIED

COMPUTER RELATED QUESTIONS

11. Does any member of the jury panel not have a computer in your home?

_____ GRANTED _____ DENIED

Follow up question could include:

a. For those of you that have computers, have you ever used your computer to view picture or video files?

12. How many of you have never used the Internet?

_____ GRANTED _____ DENIED

Follow up question could include:

a. For those of you that do use the Internet, how many go online at least once a day/week/month?

13. Does anyone have any specialized computer training or self-taught knowledge of computers or the Internet?

_____ GRANTED _____ DENIED

Follow up question could include:

a. Please describe your training and/or specialized knowledge.

14. How many of you know how to download something off the Internet?

_____ GRANTED _____ DENIED

Follow up question could include:

a. How many of you know how to find the file and open it once you download it?

15. Does any member of the jury panel know what an Internet "peer-to-peer" file sharing program is? (e.g., Frostwire, Limewire, Kazaa, Gigatribe)?

_____ GRANTED _____ DENIED

a. For those jury members that have computers, do you use, or have you used any of the following peer to peer software services: Kazaa, Bearshare, Napster, Limewire, or Frostwire?

_____ GRANTED _____ DENIED

b. For those jury members who have computers, do you, or have you shared or traded videos and/or pictures using with other internet users using Kazaa, Bearshare, Napster, Limewire, Frostwire or any other type of file sharing software?

_____ GRANTED _____ DENIED

16. Has anyone ever downloaded files from the Internet without knowing the content of the files?

_____ GRANTED _____ DENIED

CHILD SEXUAL EXPLOITATION QUESTIONS

17. Some people believe that the federal government has no business regulating the content on the Internet or what people do online. Is there anyone that holds this view?

_____ GRANTED _____ DENIED

18. As I am certain you have surmised, a part of the evidence in this case will be the images themselves, which the government allege: (a) constitute child pornography; and (b) that the defendant had something to with, either by sending, receiving or possessing them, in violation of federal law. These images may be distasteful, offensive, and unpleasant to view. However, the prospect of having to see distasteful, offensive or unpleasant evidence is not a basis to avoid the responsibility of jury service. Many cases, both criminal and civil, involve unpleasant things. If we excused prospective jurors on the ground that jury duty makes demands - including some unpleasant demands - then we could not function. Moreover, the parties have the right to expect that prospective jurors will not seek to avoid jury service simply because they would rather not serve, or because they would like to avoid some unpleasantness.

Having said that, is there anyone who honestly believes there is some compelling reason why he or she could not be an impartial juror - that is to consider all of the evidence and follow the law - simply because images depicting child pornography will be presented as evidence in the trial?

_____ GRANTED _____ DENIED

19. Some people are of the mistaken belief that transmitting or trading child pornography, including trading or transmitting child pornography by computer, is an activity that is protected by the Free Speech Clause of the First Amendment to our Constitution, or may otherwise be Constitutionally-protected activity. I tell you that - as a matter of law - this is not the case. Congress has passed laws which make it a criminal offense to receive, transmit, and possess child pornography, and such activity is not protected by the First Amendment or by any other Constitutional right. Before I informed you just now that the receipt, transmission or possession of child pornography was not Constitutionally protected conduct, did you believe that it was? Do you believe that such activity should be protected by the First Amendment to the United States Constitution or by any other provision of the Constitution? Would you have any difficulty abiding by my instruction to you that such activity is not - as a matter of law - protected by the First Amendment to the United States Constitution or by any other provision of the Constitution?

_____ GRANTED _____ DENIED

Follow up question could include the following:

a. Do you believe viewing these items of evidence would impact or affect your ability to be a fair and impartial juror?

20. Does any member of the jury panel believe they will have difficulty discussing sexual matters openly with your fellow jurors during jury deliberations, if necessary, on activities involving masturbation, oral sex, anal sex, and/or child sexual abuse?

_____ GRANTED

_____ DENIED

21. Would the mere fact that this case involves criminal charges/allegations of receipt, distribution and/or possession of images depicting minors engaged in sexually explicit conduct prevent you from rendering a fair and impartial verdict?

_____ GRANTED

_____ DENIED

22. Does any member of the jury panel have young children and, as a result, feel they could not be fair and impartial in a case involving images of child sexual exploitation?

_____ GRANTED

_____ DENIED

23. Have you, a family member or anyone you know been involved in a divorce or child custody case in which false accusations of sexual assault or child sexual abuse were made. (If anyone indicates in the affirmative, they should be allowed to approach the bench and discuss).

_____ GRANTED

_____ DENIED

24. Does any member of the jury panel feel laws concerning the receipt and/or possession of material involving minors engaged in sexually explicit conduct should not be enforced at all or enforced less vigorously than other laws?

_____ GRANTED

_____ DENIED

25. Does any member of the jury condone sexual activity between adults and minors, or between two minors under 18?

_____ GRANTED

_____ DENIED

Follow up question could include the following:

a. If so, at what age do you think such activity is acceptable between a person over the age of 18 (an adult) and a person under the age of 18 (a minor)?

b. At what ages do you consider sexual activity appropriate between two minors?

26. Can any member of the jury not accept the fact that a person who engages in child sexual abuse might appear to be normal in his dealings with others, or does any member of the jury think that individuals with a sexual interest in children have a certain, identifiable look?

_____ GRANTED _____ DENIED

27. We all have different and varied life experiences which may make it difficult to sit as a jury member in a case involving the sexual exploitation of children. Is there anyone here who believes they could not listen to and view the evidence in this case and render a verdict in a fair and impartial manner for any reason we have not previously discussed? (If anyone indicates in the affirmative, they should be allowed to approach the bench and discuss.)

_____ GRANTED _____ DENIED

WHEREFORE, premises considered, the United States respectfully requests that the foregoing questions be propounded to the jury panel as part of the jury selection process.

Respectfully submitted,

ROBERT PITMAN
UNITED STATES ATTORNEY

BY: /s/
J. BRANDY GARDES
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June, 2013, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System which will transmit notification of such filing to the following CM/ECF participant:

Michael Gorman, AFPD
Shane McMahon, AFPD

_____/s/_____
J. BRANDY GARDES